

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED BY
CC Docket No. 93-124 ✓

In the Matter of

Treatment of Operator Services
Under Price Cap Regulation

NOTICE OF PROPOSED RULEMAKING

Adopted: April 23, 1993;

Released: May 26, 1993

Comment Date: July 6, 1993

Reply Comment Date: July 21, 1993

By the Commission:

I. INTRODUCTION

1. By this Notice, the Commission proposes to establish a new category in the basket for traffic sensitive switched interstate access elements (Traffic Sensitive Basket) to include the rates set by local exchange carriers (LECs) for operator services.¹ Rates included in this new category would be subject to banding constraints identical to those used to constrain annual price changes in other traffic sensitive service categories. Aggregate rates in the category could move up or down 5 percent per year adjusted for changes in the price cap index for the basket. We tenta-

tively conclude that the creation of a separate category for operator services is necessary to ensure that price cap companies do not have unlimited ability to change prices for these services in relation to other traffic sensitive or interexchange rates.

II. BACKGROUND

2. Over the past few years, the Commission's Common Carrier Bureau (Bureau) has granted various LEC requests for waiver of Part 69 of the Commission's Rules, 47 C.F.R. Part 69,² to establish access elements to recover the costs of providing operator services.³ In its Order addressing the waiver petition filed by the Ameritech Operating Companies (Ameritech), the Bureau ultimately required LECs to create a separate access element for operator services and to allocate all costs of these services to that element.⁴ Recognizing that other LECs would likely seek similar waivers, the Bureau also in the *Ameritech Order* granted a blanket waiver of Part 69 to enable other LECs to offer operator services without seeking individual waivers.⁵

3. Under price caps, operator services are considered to be "new" services at the time they are introduced.⁶ Although temporarily held outside price cap baskets and service categories, new services are eventually incorporated into a basket and category. As a general rule, the Part 69 rules determine the basket and category classification, but the current Part 69 rules do not describe an operator service element or elements. Several LECs have established such elements pursuant to Part 69 waivers.⁷

III. PROPOSED RULES

4. We propose to amend Part 61 of our Rules to establish a new "Operator Services" category in the Traffic Sensitive Basket for LECs subject to price cap regulation. We believe that placement of these services in a newly-created category within the Traffic Sensitive Basket is necessary to ensure

¹ LECs generally provide two types of interstate operator services -- operator transfer service and line status verification. Operator transfer service is provided when a LEC operator receives a "O-" call from a party seeking to place an interLATA call and transfers that call directly to the interexchange carrier (IXC) selected by that party. Line status verification service is provided when a LEC operator checks, on behalf of an IXC operator, whether a particular access line is either "busy" or out-of-service. The LEC operator, after determining that a line is "busy," may also interrupt the line for emergency purposes.

² Section 69.4(b) of the Commission's Rules, 47 C.F.R. § 69.4(b), describes the access service elements established by the Commission. Sections 69.306(b) and 69.404 of the Rules, 47 C.F.R. §§ 69.306 (b), 69.404, require that costs associated with operator services be allocated to the interexchange category of Part 69.

³ See e.g., Bell Atlantic Telephone Companies, Petition for Waiver, 4 FCC Rcd 455 (Com.Car.Bur. 1988); New York Telephone and New England Telephone Companies, Petition for Waiver, 4 FCC Rcd 1391 (Com.Car.Bur. 1989), see also, New York Telephone and New England Telephone Companies, Petition for Waiver, 6 FCC Rcd 1588 (Com.Car.Bur. 1991); Illinois Consolidated Telephone Petition for Waiver, 5 FCC Rcd 3246 (Com.Car.Bur. 1990); and Southwestern Bell Telephone Companies, Petition for Waiver, 5 FCC Rcd 3452 (Com.Car.Bur. 1990).

⁴ Ameritech Operating Companies, Petition for Waiver of Section 69.4(b) of the Commission's Rules, Transmittal Nos. 425 and 467, Memorandum Opinion and Order, 6 FCC Rcd 1541

(Com.Car.Bur. 1991) (*Ameritech Order*).

⁵ See note 4, *supra*. The Bureau imposed two conditions on the blanket waiver granted in the *Ameritech Order*: (a) the LEC must create separate Part 69 rate elements for these new services (i.e., it cannot simply make them sub-elements of a current access element); and (b) the LECs must allocate all costs associated with the provision of those new services to these Operator Services access elements. See *Ameritech Order*, 6 FCC Rcd at 1542.

⁶ The Commission adopted price cap regulation for certain LECs on September 19, 1990. See Second Report and Order, 5 FCC Rcd 6786 (1990) and Erratum, 5 FCC Rcd 7664 (1990) (*LEC Price Cap Order*), modified on recon. 6 FCC Rcd 2637 (1991), petitions for recon. of ONA Part 69 Order pending, petitions for further recon. dismissed, 6 FCC Rcd 7482 (1991), *aff'd National Rural Telecom Ass'n v. FCC*, No. 91-1300, (D.C. Cir. March 26, 1993), further modified on recon. 6 FCC Rcd 4524 (1991) (*ONA Part 69 Order*), petitions for recon. of ONA Part 69 Order pending. Regarding the treatment of new services under price cap regulation, see *LEC Price Cap Order*, 5 FCC Rcd at 6824-6825 (paras. 312-321).

⁷ These LECs include the New York Telephone Company and the New England Telephone Company (NYNEX), the BellSouth Telephone Companies, Ameritech, Pacific Bell, the GTE System Telephone Companies, Southwestern Bell Telephone Company, and the Bell Atlantic Telephone Companies. Illinois Consolidated, which is not subject to price cap regulation, also provides such operator services.

that price cap companies do not have unlimited ability to change prices for these services in relation to other traffic sensitive or interexchange rates. We also propose to apply banding limitations on this new service category identical to those used for the other traffic sensitive categories, e.g., plus or minus 5 percent per year adjusted for changes in the basket's price cap index. Use of a separate category, coupled with banding limitations, will ensure that operator services customers as a whole will not experience large price increases or decreases in a given year, while at the same time providing LECs with the flexibility they may need to adjust prices in an incremental manner.

5. We seek comment on this proposal, and invite parties to submit alternative proposals.

IV. REGULATORY FLEXIBILITY ACT

6. Because of the nature of local exchange and access service, this Commission has concluded that small telephone companies are dominant in their fields of operation and therefore are not small entities as defined by the Regulatory Flexibility Act. *See* MTS and WATS Market Structure, 93 FCC 2d 241, 338-39 (1983). Thus, this Commission is not required by the terms of the Act to apply the formal procedures set forth therein. We are nevertheless committed to reducing the regulatory burdens on small telephone companies whenever possible consistent with our other public interest responsibilities. Accordingly, we will, on an informal basis as appropriate, analyze the effect of these proposed regulations on small telephone companies.

V. EX PARTE REQUIREMENTS

7. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

VI. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that NOTICE IS HEREBY GIVEN of the proposed changes in the basket established under price cap regulation for traffic sensitive switched interstate access services. COMMENT IS INVITED on these proposals.⁸

9. Accordingly, IT IS FURTHER ORDERED that, pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, comments SHALL BE FILED with the Secretary, Federal Communications Commission, Washington, D.C. 20554 on or before **July 6, 1993**. Reply comments SHALL BE FILED as indicated above on or before **July 21, 1993**. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting documents. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. In addition, parties should file two copies of any such pleadings with the Tariff Division, Common Carrier Bu-

reau, Room 518, 1919 M Street, N.W., Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with International Transcription Service, the Commission's duplicating contractor, at its office in Suite 140, 2100 M Street, N.W., Washington, D.C. 20037.

10. IT IS FURTHER ORDERED that the Secretary shall cause a summary of this Notice of Proposed Rulemaking to appear in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Donna R. Searcy *WTC*
Secretary

⁸ These actions are taken pursuant to Sections 1, 4(i) and (j), 201-205, 218, 220, and 403 of the Communications Act as

amended, 47 U.S.C. §§ 151, 154(i) and (j), 201-205, 218, 220, and 403.